

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**DAVID MCCAIG, INDIVIDUALLY AND
AS THE REPRESENTATIVE OF THE
ESTATE OF ALLIE VIDA MCCAIG,**

Plaintiff,

v.

WELLS FARGO BANK (TEXAS), N.A.

Defendant

Civil Action No. 2:11-cv-00351

WELLS FARGO’S MOTION FOR COSTS PURSUANT TO FRCP 26(b)(4)

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Wells Fargo Bank, N.A. (“Wells Fargo”), Defendant in the above-styled and numbered civil action, and files its Motion for Costs pursuant to Fed. R. Civ. P. 26(b)(4), and would respectfully show unto the Court as follows:

**I.
RELIEF REQUESTED**

1. Wells Fargo requests that the Court order Plaintiffs to reimburse Wells Fargo for its expert witness fees associated with the expert depositions of J.F. “Chip” Morrow and Dale A. Faulkner, M.D. in the total amount of **\$5,040.00** pursuant to Fed. R. Civ. P. 26(b)(4)(E).

2. Wells Fargo further requests that the Court order Plaintiffs to pay this sum within thirty (30) days of entry of this Court’s Order.

II.
STANDARD OF REVIEW

3. Federal Rule of Civil Procedure 26(b)(4)(E) provides for the recovery of expert fees as part of discovery. This rule applies to both parties, not just the prevailing party. *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 332-33 (5th Cir. 1995).

III.
ARGUMENT

4. On June 19, 2013, Plaintiffs deposed Wells Fargo's mortgage industry expert, J.F. "Chip" Morrow. The expenses associated with Mr. Morrow's deposition total \$3,040.00. Mr. Morrow's fee is comprised of 3 hours for preparation and review of his deposition, plus an additional 4.6 hours for deposition and travel time. Mr. Morrow charged an hourly rate of \$400.00. A true and correct copy of Mr. Morrow's Invoice is attached hereto as **Exhibit "A"** and is incorporated herein by reference.

5. On June 20, 2013, Plaintiffs deposed Wells Fargo's medical expert, Dale A. Faulkner, M.D. The expenses associated with Dr. Faulkner's deposition total \$2,000.00. Dr. Faulkner charged an hourly rate of \$400.00 per hour. A true and correct copy of Dr. Faulkner's Invoice is attached hereto as **Exhibit "B"** and is incorporated herein by reference.

IV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Wells Fargo Bank, N.A. respectfully requests that the Court grant Wells Fargo's Motion for Costs pursuant to Fed. R. Civ. P. 26(b)(4) and award Wells Fargo any further relief at law, and in equity, as is just.

Respectfully submitted,

By: //s// Daniel J. Kasprzak

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OF COUNSEL:

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**ATTORNEYS FOR DEFENDANT,
WELLS FARGO BANK, N.A.**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Costs was sent to counsel for Plaintiffs by electronic service via the Court's CM/ECF system on this 10th day of January, 2014, as follows:

Via facsimile (979) 922-8857

SAVANNAH ROBINSON
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DANBURY, TEXAS 77534

//s// Daniel J. Kasprzak
Daniel J. Kasprzak